IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2259 of 1989

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NAVRANGPURA VILLAGE CHARITABLETRUST AND ORS - Petitioner(s)

Versus

CHINUBHAI G PATEL & 1 - Respondent(s)

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Appearance :
MR HJ NANAVATI for Petitioner(s) : 1,
MR RD RAVAL for Respondent(s) : 1,
MR HEMANT MAKWANA, ASST GOVT. PLEADER for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 16/10/2007

ORAL JUDGMENT

1. The petitioner, a charitable trust registered under the Bombay Public Trust Act, 1949 running a school, has under Article 227 of the Constitution of India challenged the judgement and order dated 21.03.89 passed by the Gujarat Secondary Education Tribunal in Application No. 372/87 quashing and setting aside the order of dismissal passed by the petitioner dismissing the respondent no.1 and directing reinstatement of respondent no.1 with full backwages while substituting the order of dismissal by an order of punishment of withholding two increments for two years for the misconduct of late submission of answer books and for being non punctual.

2. The facts in brief deserve to be set out in order to appreciate the controversy involved in this matter:

2.1 The petitioner trust is running a school wherein the respondent no.1 was appointed in primary section with effect from 23.06.75. The respondent no.1 came to be appointed as a teacher in the secondary section as he was holding degree in BSc and BEd. It is an allegation made in the petition and it was an allegation before the Tribunal also that the respondent no.1 was indulging in various activities including conducting private tuition classes and therefore he was unable to attend the school

punctually. The respondent no.1 being not punctual in coming to the school in time, a record was kept and it was sought to be established through the record that the respondent no.1 was not punctual in coming to the school. The respondent no.1 was visited with a charge sheet as complaints were received from two teachers against the conduct of the respondent no.1 in connection with a public examination of Standard 12 which was being conducted in the premises of the petitioner school on 12.06.86. A show-cause notice dated 20.06.86 came to be served by the petitioner wherein three charges were levelled against him as under:

(i)Though the assessed answer books were to be submitted by 14.05.86, the respondent had submitted them on 20.05.86 with the result that only by putting extreme effort the school could announce the result on the stipulated day of 24.05.86;

(ii)On and often the respondent was coming late to the school and that he was late for 104 days in 1983-84, for 89 days in 1984-85 and 96 days in 1985-86.

(iii)The behaviour of the respondent at the public examination of Std. 12 gave rise to suspicion and that two teachers of the school had complained regarding the behaviour on 12.06.86.

2.2 An inquiry was conducted as per the procedure laid down and ultimately the inquiry officer held the

charges to be proved against the respondent no.1 and therefore the disciplinary authority of the petitioner trust imposed penalty of dismissal from service under the provisions of Gujarat Secondary Education Act. This order was forwarded for due approval to the District Education Officer who was supposed to either approve it or disapprove it after hearing the parties within 45 days as stipulated under the Education Act. By virtue of provisions of deemed approval the dismissal order came to be effective as during the period of 45 days the concerned District Education Officer did not pass any order either approving or disapproving the action of the management.

2.3 The respondent no.1 challenged the said order by way of Application No. 372/87 before the Gujarat Secondary Education Tribunal at Ahmedabad and the Tribunal vide its CAV judgement and order dated 12.03.89 partly allowed the application quashing and setting aside the order of dismissal and directing the petitioner to reinstate the respondent no.1 with full backwages and substituting the order of penalty of dismissal with that of withholding of two increments for a period of two years in respect of the misconduct for late submission of answer books and for being non punctual. As it is stated hereinabove, being aggrieved and dissatisfied with the order, the petitioner Trust has preferred this petition under Article 227 of the Constitution of India.

3. On 31.03.89, this Court (Coram: G.T Nanavati, J. as he then was) issued rule and ordered notice to be issued in respect of interim relief which was made returnable on 06.04.89. A statement came to be made on behalf of respondent no.1 who was represented by advocate on caveat that till then the respondents will not take any action against the petitioners on the basis of the order which has been passed by the Tribunal. The said relief came to be extended time and again.

3.1 On 18.07.89, this Court (Coram : P.M Chauhan, J., as he then was) passed a detailed order staying the order of the Tribunal till further order and rule was made returnable on 28.08.89.

4. Mr H.J. Nanavati, learned advocate appearing for the petitioner trust has made submissions in detail assailing the order of the Tribunal. Mr Nanavati has submitted that the Tribunal has patently erred in setting aside the order of dismissal passed by the petitioner and has further erred in ordering reinstatement with full backwages and substituting the penalty of imposing the penalty of withholding of two increments for a period of two years making inroads on the rights of the management to impose punishment. He has further submitted that the Tribunal infact over stepped in its jurisdiction in dealing with the application of the respondent no.1 and therefore the order impugned deserves to be

quashed and set aside.

4.1 Mr Nanavati has heavily relied upon the decision of the Apex Court in the case of **Sanchalakshri and Another vs. Vijaykumar Raghuvirprasad Mehta & Anr** reported in AIR 1999 SC 578. He has submitted that the Apex Court has clearly deprecated and disapproved the action of the education tribunal in setting aside the order of punishment imposed by the management and substituting the same with punishment of stoppage of two increments with future effect. Mr Nanavati has relied upon the observation of the Apex Court made in para 6 and submitted that therefore the Tribunal in the instant case could not have brushed aside the entire set of evidences of the management of the petitioner trust and substituted the penalty. Therefore on this count the order of the Tribunal is contrary, erroneous and the same deserves to be quashed and set aside.

4.2 Mr Nanavati has further submitted that the provisions of sections 38 and 39 of the Education Act would go to show that the Tribunal did not have power to appreciate or re-appreciate the evidence on record. He has relied upon a decision in case of **Union of India vs. Parma Nanda** reported in 1989(2) SCC 177 and submitted that under the scheme of Secondary Education Act as well as rules made thereunder, the Tribunal ought to have considered only as to whether there was due compliance of principles of natural justice and should have come to

the conclusion on that basis only. It was not open to the Tribunal to take upon itself the exercise of re-evaluating and re-assessing the entire set of evidence and come to it own conclusion brushing aside the evidence relied upon by the present petitioner. The Tribunal has undertaken that exercise and therefore on this count alone the order of the Tribunal deserves to be quashed and set aside. He has also relied upon the decision of this Court in the case of **Ramanlal R. Khorsma & Anr. vs. Virabhai Talsibhai Parmar & Anr. reported in 2004(4) GLR 3342** in support of his submission.

4.3 Mr Nanavati has relied upon the decision of the Apex Court in the case of **U.P. SRTC vs. Ram Kishan Arora reported in 2007(4) SCC 627** and canvassed a submission that the Tribunal could not have re-appreciated the evidence and it is not open even to this Court to do the same under Article 227 of the Constitution of India. This being the latest judgement on the said point the same could go to show that the impugned order made by the Tribunal deserves to be quashed and set aside. Mr Nanavati has also relied upon the decision of the Apex Court in the case of **Kishore Kumar Khaitan & Anr. vs. Praveen Kumar Singh reported in AIR 2006 SC 1474** and submitted that as per the decision of the Apex Court Article 227 of the Constitution cannot be said to be imposing any restrictions upon the Court to restrain itself from appreciating the errors of the Tribunal whose judgement is under challenge otherwise it would

amount to perpetuating injustice which is done under the order impugned.

4.4 Mr Nanavati has relied upon the decision of this Court in the case of **Ambalal Motibhai Patel, Chairman, New English School Trust v. Smt. Hansaben Dinmanishanker Shastri & Anr. reported in 1991(2) GLR 713** and submitted that now the question with regard to order of the Tribunal flowing from 36(5) is no more required to be elaborately argued. He has pointed out the factual aspects in order to show the perversity in the judgement of the Tribunal. Mr Nanavati has submitted that at page 5 of the petition it was clearly averred by the petitioner which is also borne out by the record of the Tribunal that the petitioner was non punctual on account of his other activities like his engagement in private coaching classes etc. During the deposition before the Tribunal the respondent no.1 was subjected to a question with regard to his engagement with Patel Classes which has gone on record and has also been overlooked by the Tribunal while quashing and setting aside the order of the management. Mr Nanavati has brought to the notice of this court the deposition at Ex. 6 which has been ignored or not dealt with by the Tribunal in its order.

4.5 He has further submitted that the Tribunal has completely ignored the principles of pleadings and submissions as the Tribunal has come to the conclusion that the inquiry officer was biased though

no bias was pleaded by the respondent no.1 at all. There is only one allegation that the inquiry officer had not acted in accordance with law and that itself could not mean that it was an allegation that the inquiry officer was biased or that the conduct of the inquiry officer was such as to term him to be biased. Mr Nanavati has relied upon the decision of the Apex Court in the case of **Workmen in Buckingham and Carnatic Mills, Madras vs. Buckingham and Carnatic Mills, Madras reported in 1970(1) LLJ 26** in support of his submission that the bias cannot be proved by making mere allegations without there being any substance on record. Therefore, in view of this also the decision of the Tribunal deserves to be quashed and set aside.

5. Mr R.D Rawal, learned advocate appearing for the respondent no.1 has made elaborate submissions defending the order of the Tribunal. Mr Rawal has submitted that in fact the order of dismissal was a result of a well planned design either to bring about the respondent no.1 to the terms of the management or to dispense with his services as it was not palatable to the management. Mr Rawal has submitted that the motive behind the issuance of charge-sheet could be evident from the very reading of the charge-sheet which would go to show that the management had designed to compel the respondent no.1 to agree to their terms or to dispense with his services.

5.1 Mr Rawal has submitted that the respondent no.1

being a forthright person admitted that he was not punctual on some occasions but there were sufficient reasons militating against his coming to the school in time. When the management suffered the non punctuality of the petitioner for two to three years as could be seen from the charge-sheet itself without any demur then it can well be said that it was a trap laid down by the management to constitute charge against the respondent no.1. The charge in itself would show that the management has become so meticulous in pointing out each and every incident of the respondent's late coming to the school. Mr Rawal has also emphasized the fact that the school timings being from 11.00 hrs the reporting time of the teachers was 10.55 hrs. On many occasions the respondent was late only as he could not reach at 10.55 hrs but he had come within the time gap of 10.55 hrs and 11.00 hrs and on some days even after 11.00 hrs but that in itself should not have been viewed as such a serious misconduct as the school had acquiesced into his late coming by not issuing memo and/or taking action. Mr Rawal has also relied upon the reply given by the respondent no.1 wherein instances have been quoted in respect of co-employees who were permitted to come late and no action was taken against them.

5.2 Mr Rawal has attempted to show that the sufferance on the part of the school management for as many as three years in issuance of charge-sheet is malafide as this very management has not taken any

action against any other late comer. Mr Rawal has further submitted that the issuance of charge sheet itself is malafide. He has heavily relied upon the words of the charge-sheet and submitted that the second charge in respect of late submission of answer sheets in itself was ill-founded inasmuch as the factum of death of two close relatives of the petitioner was infact within the knowledge of the management and the disciplinary authority himself has sent a note of condolence and acknowledged its folly in reprimanding the petitioner on this count. Mr Rawal has heavily relied upon the reply given by the respondent to the charge-sheet and submitted that the tenor of the reply reveals the personality of the respondent no.1 which appears to be nothing but being forthright on his part as he has candidly accepted and admitted the charges in respect of late coming on many occasions and late submission of the answer sheets. Mr Rawal has submitted that the late submission of answer sheets and late coming deserves to be viewed in context of the explanation coming forward from respondent no.1 which would go to show that infact charges of late coming to the school and non submission of answer sheets in time did not have any foundation to rest upon. He has also submitted that the inquiry officer did not conduct the inquiry strictly in accordance with principles of natural justice and therefore the Tribunal which is the court of first instance was entitled to appreciate the aspects and come to its own conclusion.

5.3 Mr Rawal has heavily stressed the factum of the inquiry officer putting questions to the delinquent respondent no.1 hereinabove which the tribunal has termed to be “leading questions” which were not permissible to be asked. Mr Rawal has submitted that the respondent no.1 was not provided legal assistance or atleast assistance of a friend to help him in the disciplinary proceedings. Mr Rawal from the proceedings attempted to point out that the respondent no.1 did give name of a fellow teacher who was not willing to be his assistant or of a friend who can help him in defending the charge. In such a situation Mr Rawal has submitted that it was a duty cast upon the authorities to provide the delinquent with help of someone who could have been of real assistance to the respondent no.1 as from the record it appears that no such attempt was made on the part of the inquiry officer which has vitiated the inquiry proceedings. Mr Rawal has further submitted that the inquiry officer while submitting his report based upon his assumption of the evidence has conveniently ignored the explanation given by the delinquent respondent no.1 in respect of the charge of late coming and late submission of answer sheets. He has submitted thus on that count also the Tribunal was justified in coming to the conclusion that the inquiry officer was biased and therefore the inquiry was vitiated.

5.4 Mr Rawal has submitted that the Tribunal has however substituted the penalty of dismissal with

that of withholding of two increments for a period of two years and the same being absolutely just and proper no interference is called for under Article 227 of the Constitution of India. He has also submitted that infact the concerned District Education Officer at the relevant time was acting against the respondent no.1 as deliberately he permitted the statutory period to pass so that the respondent no.1 shall be deprived of his right to make an appeal before the Tribunal and the deemed approval becomes operative. Mr Rawal has submitted that the District Education Officer passed an order after the statutory stipulated period of 45 days only with a view to prejudice the concerned authorities as he has approved the decision of the management in dismissing the services of the petitioner. Mr Rawal has submitted that the District Education Officer in his order has clearly mentioned that his children were studying in the school and therefore there was a consideration whether to take up the matter for approval or not and ultimately after passing of statutory period the District Education Officer passed an order approving the decision of the management on the ground that his children were studying in the primary section whereas the case on hand pertained to secondary section. On this basis Mr Rawal has made submission that the District Education Officer was acting malafidely and the order of the District Education Officer was passed with an aim to prejudice the concerned authorities.

5.5 Mr Rawal has further submitted that so far as the third charge is concerned the same cannot be said to have been proved and the Tribunal has rightly held it not to be proved as the entire incident is absolutely natural without any intention of ill-will on the part of the respondent no.1. The entire conduct of the respondent on the day on which he is said to have visited the school and passed up the numbers of three candidates/examinees to the said G.I Patel would go to show that the respondent was not activated with any motive for seeking undue favour in respect of said three examinees. In fact the inquiry officer has not taken into consideration the explanation put forward by the respondent justifying his presence in the school and passing of the chit. The motive attributed to the respondent no.1 by the said G.I Patel has its genesis in the pre-existing disliking and/or grudge against the respondent inasmuch as the respondent did not favour Mr Patel whose daughter was studying under him. The entire incident is said to have happened in presence of one Shri Boravadia, a fellow teacher who has not been examined at all. Had Mr Boravadia been examined by the management, truth would have come out indicating clearly that the motives which were attributed to the respondent were lacking and therefore the entire charge would have been watered down to an incident which cannot be said to be an exceptional one so as to attract disciplinary proceedings against respondent no.1.

5.6 Mr Rawal has submitted that the charge contains the exchanges between the respondent no.1 and the managing trustee and the managing trustee has also not been examined by either the management or the inquiry officer and in absence thereon the admission be said to have been attributed to the respondent which also cannot be relied upon. The tribunal has appreciated all these facts and come to the conclusion that the inquiry officer was biased and the charge no.3 was not proved and therefore the penalty of dismissal was quashed and set aside. This Court under Article 227 of the Constitution of India may not reverse the same even if there appears to be anther view plausible.

7. Mr Rawal has relied upon a decision of the Apex Court in the case of **Ouseph Mathai and Others vs. M. Abdul Khadir** reported in 2002(1) SCC 319 and heavily stressed upon the observation of the Apex Court in head note 'C' and submitted that the scope of this Court under Article 227 to interfere with the order of the adjudicating authority whose order under examination is very limited. Mr Rawal has submitted that as per the observation of the Apex Court the high Court may not interfere with the decision of the Tribunal even if it is found to be wrong as mere wrong decision is not a ground for exercising jurisdiction under Article 227 of the Constitution of India. It is submitted on behalf of the respondent no.1 that the high court may intervene under Article

227 only where it is established that lower court or tribunal has been guilty of grave dereliction of duty and flagrant abuse of power resulting into gross injustice to any party and that the high court is not to sit as an appellate court over the decision of the Tribunal.

7.1 Mr Rawal has also relied upon the decision of the Apex Court in case of **Mohd. Yunus vs. Mohd. Mustaqim & Ors** reported in AIR 1984 SC 38 and submitted that the Apex Court has while examining the scope of jurisdiction of high court under Article 227 observed that even error of law cannot be corrected and therefore on this count Mr Rawal submitted that the decision of the Tribunal does not call for any interference as the Tribunal cannot be said even to have erred while quashing and setting aside the order of dismissal and substituting the same so far as the charge in respect of late submission of answer sheet and non punctuality are concerned.

7.2 Mr Rawal has further relied upon a decision of the Apex Court in the case of **Khalil Ahmed Bashir Ahmed vs. Tufelhussein Samasbhai Sarangpurwala** reported in AIR 1988 SC 184 and further relying upon para 13 of the said decision submitted that in view of the decision of the Apex Court cited hereinabove where even two views are possible and plausible the view which may appear to be attractive to the high court need not be taken for reversing the view taken by the tribunal.

7.3 Mr Rawal has also relied upon the decision of this Court (Coram: H.K Rathod, J.) in SCA 13571/06 decided on 13.07.06 wherein this court based upon the decision of this court did not reverse the view taken by the lower court on the basic principle that where two view are possible the high court cannot act as an appellate authority to interfere with the award while exercising its powers under Article 227 of the Constitution of India. Mr Rawal has further relied upon a decision in the case of **Roshan Deen vs. Preeti Lal** reported in AIR 2002 SC 33 and submitted that the jurisdiction of the high court under Article 227 of the Constitution of India is required to be exercised for advancing justice even after the lower court or the tribunal has taken an erroneous view of law but if justice is done thereby then same cannot be erased by the high court exercising powers under Articles 226 & 227 of the Constitution of India in the name of correcting error of law.

7.4 Mr Rawal has submitted that in the view of the charge-sheet and its wordings and in view of the fact that the respondent was not given appropriate assistance to defend himself in view of the fact that the respondent delinquent was asked to reply to leading questions made by the inquiry officer and in view of the fact that even the District Education Officer was acting in favour of the management on account of his children studying in the same school and in view of the fact that the respondent's

explanation with regard to the third charge being absolutely just, proper and believable the tribunal has done justice even by substituting punishment. Assuming for the sake of argument that it was not open to the tribunal to do so, then also the justice done by the Tribunal need not be erased by this court in exercise of its powers under Article 227 of the Constitution of India.

7.5 Mr Rawal has also relied upon the decision of the Apex Court in the case of **Zunjarrao Bhikaji Nagarkar vs. Union Of India and Ors** reported in 1999 SCC (L&S) 1299 and submitted that vague or indefinite information cannot be made basis for disciplinary proceedings. Mere suspicion nourished by the management cannot be made basis for charge against the delinquent. The ratio in the case of Zunjarrao Nagarkar(supra) is that the suspicion and/or vague information creating suspicion in the mind of management cannot be made basis for initiating disciplinary proceedings and issuance of charge-sheet against the employee. He has submitted on the basis of this ratio that the charge itself indicates that the management has attributed “suspicion” in the conduct of the respondent as it is couched that the conduct of the respondent in visiting the school during the practical test/examination of the board was quite suspicious. The charge of suspicious conduct therefore could not have been made basis for dismissing the respondent from the services and therefore the Tribunal has rightly quashed and set

aside the same and this court may not interfere with the same while exercising this jurisdiction under Article 227 of the Constitution of India.

7.6 Mr Rawal has placed reliance upon the decision in the case of **M.V Bilani vs. Union Of India and Ors.** reported in 2006 SCC (L&S) 919 and submitted that the Apex Court in case of M.V. Bilani (supra) in terms observed that the inquiry officer in the departmental inquiry is to perform a quasi judicial function and upon analysis of documents should arrive at a conclusion and while doing so he cannot take into consideration any irrelevant fact or refuse to consider the relevant facts nor can he shift the burden of proof or reject the testimony of witnesses only on the basis of surmises and conjectures. Nor could he inquire into the allegations with which the delinquent is not charged with. Based upon the observations of the Apex Court Mr Rawal has submitted that the inquiry officer has not conducted himself in the way he should have conducted and therefore the Tribunal has rightly held him to be biased against the delinquent respondent hereinabove. Mr Rawal has submitted that it was not open to the inquiry officer to ask leading questions to the delinquent which have been enlisted by the Tribunal which would go a long way to show that the inquiry officer was biased against the respondent and was in undue favour of the management. He has also submitted that the inquiry officer while analysing the facts and materials cannot indulge in the realm of conjectures and

surmises. In the instant case, the report reveals that the inquiry officer has precisely done the same which has not only vitiated the report of inquiry officer but the resultant order of penalty which has rightly been quashed and set aside by the Tribunal and this court may not interfere with the same under Article 227 of the Constitution of India.

7.7 Mr Rawal has further relied upon a decision of the Apex Court in the case of **Jai Bhagwan vs. Ambala Central Co-operative Bank Ltd. & Anr** reported in 1984(1) LLJ 52 and submitted that the non examination of material witnesses who would have thrown light on the happening is fatal to the process of inquiry and therefore the same deserves to be quashed and set aside and the tribunal has rightly quashed the same which may not be interfered with by this Court. Mr Rawal has also submitted that the Tribunal has no powers to hold fresh inquiry or take evidence in a disciplinary proceeding. However, the Tribunal has been infact taking evidences based upon the interpretation of the statutory provisions and therefore it is open to the Tribunal to take evidences in a given case and that in the present case it was not necessary to hold a fresh inquiry at all. He has further submitted that by delayed passing of order, though deeming fiction has come into operation, the District Education Officer has deliberately helped the management and therefore the opportunity to prefer an appeal against his order is missed by the petitioner otherwise he would have been

in a position to prefer an appeal instead of application.

8. Mr Hemant Makwana, learned AGP appearing for the State has submitted that the District Education Officer did not act malafide as alleged and looking to the order of the District Education Officer it can be said that the action of the management was absolutely just and proper and the Tribunal ought not to have reversed the same.

9. This Court has heard learned counsel for the parties and perused the material on record. This petition is under Article 227 of the Constitution of India and therefore this Court needs to be mindful of the fact that appreciation or re-appreciation of evidence is not required to be undertaken. However, in order to deal with the rival submissions of the learned counsel for the respective parties the reference is required to be made to the material on record. The respondent was dismissed after inquiry on the basis of the inquiry officer's report finding him guilty of all the charges. The charge is in respect of the petitioner's unbecoming of a teacher. This is the sum and substance of the entire charge-sheet. Bearing this main allegation in mind the controversy deserves to be examined. The authorities have levelled charge of unbecoming of a teacher on the respondent on the basis of three incidents namely (i) late submission of answer sheets assigned to the delinquent for assessing, (ii) habitually remaining

non punctual & (iii) his conduct during the examination conducted for the 12th standard in passing up chit containing roll numbers of three examinees to a fellow teacher. Thus on the basis of the aforesaid three incidents, the inquiry in the allegation of the respondent's unbecoming and deprecatory attitude as a teacher was sought to be made.

10. The scheme of the Gujarat Secondary Education Act whereunder the inquiry was conducted and punishment was inflicted upon the respondent deserves to be borne in mind. The Gujarat Secondary Education Act provides for dismissal, removal and reduction in rank of certain persons under Section 36 of the Gujarat Secondary Education Act, 1972 (hereinafter referred to as the 'Education Act' for the sake of brevity). The section 36 of the Education Act provides that no person who is appointed as Head Master, Teacher or a member of a non-teaching staff of a registered private secondary school shall be dismissed or removed or reduced in rank nor shall his service be otherwise terminated by the manager until he has been given by the manager a reasonable opportunity of showing cause against the action proposed to be taken in regard to him and the action proposed to be taken in regard to him has been approved in writing by an officer authorised in this behalf by the Board. It is further provided therein that the officer entrusted with the duty of approving or disapproving the decision of the manager of the private secondary school is to communicate his

decision within a period of 45 days from the date of receipt by him of the proposal of the action proposed by the manager and in case such a decision is not communicated to the manager by the said officer within 45 days then it shall be deemed to have approved by the said officer. It deserves to be noted that barring this provision no other elaborate procedure is incorporated under Section 36 of the Education Act. The management's right to dispense with the services of the teacher is well recognized subject to the conditions imposed upon it under Section 36 of the Education Act.

11. The allegations of unbecoming of a teacher or acting not befitting a teacher are, as it is stated hereinabove, based upon three incidents namely the respondents not being punctual in attending the school in time, his late submitting of answer sheets resulting into tremendous efforts on the part of the school authorities in declaring the results in time and on the appointed date and the incident of the respondent who was noway connected with the public examination for the Standard 12 which was being conducted in the school premises to visit the school premises and passing a chit bearing roll numbers of three examinees to fellow teacher. The charge sheet also contains exchanges between the delinquent respondent and the managing trustee but they are merely reproduced in the charge sheet in order to support the allegation and they themselves are not construed in the allegation against the respondent

delinquent. However, as the incidents go to show that it is in form of wordings attributed to the respondent delinquent. The respondent-delinquent's reply to the charge sheet would assume importance in appreciating the conducting of inquiry. It may be noted that the respondent delinquent in his elaborate reply to the charge sheet has not specifically denied the allegation imputed upon coming late to the school nor has he denied late submission of answer sheets and admitted the factum of visiting the school premises and passing of chit bearing roll numbers of three examinees to fellow teacher who was discharging his duty as invigilator/supervisor in the public examination in Standard 12th.

11.1 The delinquent has rather attempted to justify his all the three conducts on various grounds. The delinquent has elaborately submitted that though he has been coming late since last three years, the management has not taken up any objection to his late coming as no memo is even issued to him. The delinquent has quoted other teachers who were also coming late to the school and in their cases no action was even proposed by the management and therefore it was submitted on the part of the delinquent that the late coming was universally accepted by the management in respect of teachers or in respect of those who were coming late and it could not have been subject matter of inquiry. Similarly, the delinquent submitted in his reply to the charge-sheet that the factum of two demises of his kin was within the knowledge of the management and the

management had infact sent condolence note and therefore the late submission of answer sheets also could not have become subject matter of charge sheet. The delinquent has further submitted with respect to visiting his school during the public examination that he infact wanted to help those three examinees whose parents were known to him and who were finding it difficult in locating their examination hall and one of them was feeling nauseating. Thus in short it can be said that the delinquent infact admitted the allegations against him in his reply to the charge sheet itself though with justifications that warranted his such conduct. In view of this the inquiry officer had to inquire into the aforesaid three incidents which infact had been admitted by the delinquent in his first reply itself. The delinquent has proceeded on the basis of assuming that the charge was also in respect of his motive for passing on the chit and therefore being perturbed by this kind of charge he proceeded on answering and addressing the inquiry. Unfortunately, the learned counsel for the delinquent has also denied the same line of submission before this Court.

12. The law in respect of the jurisdiction of the Tribunal under the Education Act has become crystalised by now. The Apex Court in case of Sanchalakshri (supra) has in terms laid down that the Tribunal had not to take upon itself the task of appreciating and re-appreciating the evidences and substituting the penalties imposed by the school management. Bearing the scope of the

Tribunal's jurisdiction in such cases the submissions advanced on behalf of the delinquent deserves to be dealt with hereinafter.

13. Mr Rawal, learned advocate appearing for the respondent delinquent has attempted to justify the order of the Tribunal by assailing the inquiry itself. Mr Rawal has assailed the initiation of inquiry on the ground of inquiry being malafide and the result of a pre-planned design to dispense with the services of the delinquent. Mr Rawal has submitted that the school management actually laid a trap as it did not take any action and acquiesced into the delinquent's late coming and all of a sudden visited him with a charge of late coming. The management did not take any action against other late comers. In respect of the second incident of late submission of the answer sheet, Mr Rawal has submitted that there was all jurisdiction on the part of the workman in not submitting the answer sheets in time as on account of the sad demises of his close relatives and family member the answer sheet could not be submitted on time but that in itself could not have been a subject matter of disciplinary proceedings. Mr Rawal has submitted that the delinquent's reply to the charge sheet itself would reflect the delinquent's personality as a forthright person. This court is unable to with this submission of Mr Rawal that the inquiry cannot be held in

respect of the aforesaid two charges. A teacher is supposed to be a role model for his students. No school management can ever condone late coming of a teacher. Mr Rawal's submission that no action for a period of two to three years in itself amounts to condone the late coming also cannot be accepted. Infact the charge itself indicates that the delinquent was time and again asked to come in time and the inaction on the part of the school management cannot be construed as permission to come late so as to restrict the school management from initiating any action against such delinquent. Mr Rawal's submission therefore in this regard deserves to be rejected. This Court is unable to agree with the submission of Mr Rawal that the late submission of answer sheets in itself cannot be subject matter of any disciplinary proceedings. A teacher is to be vigilant in respect of assessing the answer sheets entrusted to him and any default on the part of the teacher who has entrusted with the task of assessing the answer sheets would have cascading effect upon the declaration of the result of the entire examination. This default cannot be viewed lightly as it is suggested by Mr Rawal, learned advocate appearing for the respondent delinquent.

13.1 The delinquent cannot be permitted to plead that the factum of demises in the family was within the knowledge of the management as the management and its

members sent condolence note to the delinquent. The sending of condolence note in itself cannot be said to be a gesture preventing the management from initiating any action for not submitting the answer sheet in time by the delinquent. Infact the delinquent if was really prevented from submitting answer sheet on account of the demises in his family then it would have been straightaway mentioned by the delinquent in his first reply to the charge sheet as it is noted hereinabove. The delinquent has not mentioned as to what was the date on which the death occurred and that what was the date on which he was entrusted with the task of assessing the answer sheets and how the death in his family prevented him from assessing the answer sheets and submitting the same in time. Thus in absence of such submissions on the part of the delinquent the default cannot be said to be justified so as to condone the same. Therefore it can well be said that the delinquent did not specifically deny the charge of late coming and that of late submitting of answer sheets.

14. Mr Rawal's submission with regard to the incident of the petitioner visiting the school premises and passing on chit bearing roll numbers of three examinees only for helping them making it to be a very natural act on the part of the delinquent also cannot be accepted as it is stated hereinabove. As stated earlier, a teacher is supposed to be a role model for the student and he is supposed to be aware of the rules of conduct that during a public examination of standard 12 no one is permitted to enter the premises except those who are entrusted the

duty of invigilator/supervisor and the examinees concerned. In the instant case the delinquent did not only enter the premises but also passed on a chit bearing three roll numbers of three examinees who were known to him. It deserves to be noted that the charge sheet has highlighted this fact only and it does not impute any motive of corrupt practice etc upon the delinquent. Now the delinquent has misread the motive into this charge and then attempted to indicate that no motives were proved against him. At the same time the fact remains to be noted that the delinquent has not denied the fact of his visiting the school premises wherein the public examination was being conducted and passing on the chit bearing roll numbers of three examinees to his fellow teacher. This conduct itself was unbecoming of a teacher which has not been denied by the delinquent. The absence of motive cannot be made basis to justify the said conduct on the part of the respondent delinquent.

15. Mr Rawal has assailed the proceedings of inquiry on the ground of breach of principles of natural justice. Mr Rawal has submitted that the inquiry proceedings were not conducted in consonance with the principles of natural justice and the inquriy officer was biased. However, Mr Rawal could not point out any material from the record indicating that the said plea was ever taken up by the delinquent before any authority. In absence of pleading, the inquiry officer ought not to have been termed to be biased as it is done by the Tribunal. Mr Rawal has submitted that the delinquent was not given legal assistance in

the form of a friend to defend his case. He has submitted that when the person who was named by the delinquent to be his friend in the inquiry proceedings had declined to be his assistant, a duty was cast upon the management to provide him with legal assistance. This submission of Mr Rawal is bereft of any merits and deserves to be rejected. The scheme of section 36 of the Education Act does not envisage any such eventuality. Assuming for the sake of examining the submission that the delinquent is to be permitted to take help of someone then also in the present facts and circumstances of the case it cannot be said that such opportunity was denied to the delinquent. Infact the delinquent was given an opportunity to defend himself with the assistance of his friend and the delinquent had availed the opportunity but unfortunately the friend who was named to be his friend in the proceedings did not agree to defend the delinquent. In such a situation it can be said that the duty of the management was over and the inquiry officer and the management were not required to go out of the way to fetch someone for the delinquent to support him in the inquiry proceedings. The submission therefore deserves to be rejected as having no merits.

16. Mr Rawal has also submitted that the inquiry proceedings were vitiated on account of non examining the witnesses like one Shri Borvadia who is said to have been present when the delinquent passed on the chit to the fellow teacher bearing roll numbers of three examinees and also non examining the managing trustee with whom the petitioner had verbal exchanges

on the incident. This Court is unable to accept the submission of Mr Rawal as the said Mr Borvadia who is supposed to have witnessed the passing of chit between the delinquent and the fellow teacher/invigilator was never named as witness in the inquiry proceedings. The inquiry proceedings were conducted on the basis of the fact of passing of the chit bearing roll numbers of three examinees to a fellow teacher who was working as invigilator in the public examination. This fact had not been denied by the delinquent. Incase the delinquent wanted to prove his case otherwise then he ought to have examined Mr Borvadia to justify that there was no motive as such. No request from the delinquent has come forward to examine Mr Borvadia as a witness. In view of this non examination of Mr Borvadia who had not been named as a witness cannot be said to have vitiated the inquiry proceedings as submitted by the learned advocate for the delinquent. It also deserves to be borne in mind that the managing trustee also was not required to examined as the verbal exchanges between the trustee and the delinquent though mentioned in the charge sheet did not form the basis of the charge. The delinquent's first reply to the charge sheet go to show that he did not deny having those exchanges with the trustee but rather he attempted to justify the same that in a heat of arguments he might have uttered those words. In either way he has not denied specifically that he did not speak what is attributed in the charge sheet. This Court has to consider that the verbal exchange between the managing trustee and the delinquent are not the basis or corner stone of the charge sheet and

therefore Mr Rawal's submission in this behalf is also of no avail to the delinquent.

17. Mr Rawal has further submitted that the inquiry proceedings are vitiated on account of the inquiry officer asking leading questions. His submission in this behalf also deserves to be rejected as having no merits. It is to be noted that the delinquent had not specifically denied the charges and the allegations imputed by him and infact it can be said that he attempted to justify the same. Therefore the inquiry officer's questions to him deserve to be looked in light of the reply given by the delinquent in response to the charge sheet itself. In view of this it cannot be said that the questions put by the inquiry officer were leading questions. They were at the best an attempt to elicit the truth during the inquiry. Therefore on this basis it can well be said that the submission made by Mr Rawal deserves to be rejected.

18. Mr Rawal's submission with regard to the DEO being biased also cannot stand scrutiny as in absence of any specific material it cannot be said that the DEO was biased. It deserves to be noted that even the Tribunal has not taken into consideration the DEO's decision approving the proposal of dismissing the delinquent as it was passed after the stipulated statutory period of 45 days was over. In view of this, the submission with regard to the DEO being biased also deserves to be rejected as it is bereft of any merits.

19. In view of the aforesaid peculiar facts and circumstances in the instant case, the authorities cited by Mr Rawal for the respondent delinquent would be of no avail to him. The Apex Court in the case of Sanchalakshri (supra) has in terms observed that the Tribunal is not justified in substituting the penalty. In the instant case, the Tribunal has not only substituted the penalty thereby allotting to itself the right of management of imposing penalty but substituted its view and perception with regard to the alleged misconduct which is said to have been proved against the delinquent. This is clearly overstepping on the part of the Tribunal as it is not open to the Tribunal to substitute its own view. It deserves to be noted that the inquiry had proceeded on the premise that the delinquent acted as unbecoming of a teacher. This was the real allegation and from the proceedings of the inquiry and the findings recorded by the inquiry officer one can come to the only conclusion that the said charge was proved. The motives for passing of the chit bearing roll numbers of three examinees alleged to be only for helping them in their time of distress would pail into insignificance in view of the fact that the respondent delinquent who was no way connected with the conducting of public examination ought not to have entered the premises and passed on the chit bearing roll numbers of three examinees to the invigilator. This factum has not been denied by the delinquent and on the contrary it is sought to be justified on the spacious plea of motive of helping those students in distress who were known to him. It was not for the Tribunal to substitute its view on

these facts for that of the inquiry officer who has found that act to be grave misconduct in itself. The non examination of Mr. Borvadia who had never been cited as a witness and the delinquent's also not opting for his examination as his witness would rather go to support the inquiry officer's report. The Tribunal has substituted its view and therefore this Court has no hesitation in holding that the finding of the Tribunal can be said to be perverse and the same is required to be quashed and set aside.

19.1 As held by the Apex Court in the case of Union of India(supra) under the scheme of the Secondary Education Act as well as the rules made thereunder it was not open to the Tribunal to go into these facts and substitute its own view for that of the inquiry officer's view in respect of the guilt of the delinquent. It was required only to examine whether there was breach of principles of natural justice or non compliance of principles of natural justice. The Tribunal had infact not taken into consideration the evidence and termed the I.O to be biased only on the basis that he put up so called leading questions to the delinquent. The factum of putting so called leading questions to the delinquent would also pail into insignificance in view of the fact that the delinquent himself never denied the fact of late submitting the answer sheets, the fact with regard to his late coming for last two to three years as oer the allegations made in the charge sheet and passing of the chit to the invigilator containing roll numbers of three examinees. The Tribunal therefore has patently erred which has rendered its order

vitiated.

19.2 The re-appreciation by the Tribunal is evident from its order. The Apex Court has clearly observed in the case of UPSRTC (supra) that the Tribunal could not have re-appreciated the evidence and even it is not open to this Court under Article 227 of the Constitution of India. It also deserves to be noted that the scope of jurisdiction of this Court under Article 227 of the Constitution of India has been reiterated by the Apex Court in the case of Kishore Kumar Khaitan (supra) that this Court can re-appreciate the errors and rectify the same. There is no restriction under Article 227 of the Constitution of India for rectifying the error of the subordinate Tribunal otherwise it would amount to perpetuating the error and illegality resulting into injustice to the party. Thus, the underlying principle is JUSTICE. In the instant case keeping the overall facts and circumstances of case in mind and the conduct of the delinquent and the proceedings of the inquiry, this Court is of the view that the order of the Tribunal cannot be sustained.

19.3 The Tribunal's decision go to show that the Tribunal was not justified in terming the inquiry officer to be biased at all. The Tribunal has also read into the charges, motives and corrupt practices upon the delinquent and come to the conclusion that the same is not proved. The Tribunal was not justified in undertaking such exercise. It was a duty cast upon the Tribunal to act within its purview in examining the order of dismissal assailed before

it. The Tribunal has exceeded its jurisdiction and come to a perverse finding that the charge levelled against the delinquent had not been proved. Infact the decision of the Tribunal cannot be said to be perverse and contrary to the material on record. It also deserves to be noted that the Tribunal was not justified in substituting the order of penalty with that of another penalty. On this cont also the order of the Tribunal deserves to be quashed and set aside.

20. Accordingly this petition is allowed. The order dated 21.03.89 passed by the Gujarat Secondary Education Tribunal is hereby quashed and set aside. Rule is made absolute to the aforesaid extent.

(S.R.BRAHMBHATT, J.)

Divya//